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#serviceofprocess @socialmedia: Accepting Social Media for Service of Process in the 21st Century

“To be sure, the Constitution does not require any particular means of service of process, only that the method selected be reasonably calculated to provide notice and an opportunity to respond. In proper circumstances, this broad constitutional principle unshackles the federal courts from anachronistic methods of service and permits them entry into the technological renaissance.”¹

INTRODUCTION

Service of process has always been tricky business.² Today, providing notice of suit to a defendant can be even more difficult than in decades past. Advancements in technology and travel have made evading service much easier than when society was considerably less mobile. Nevertheless, some of these same advancements in technology have opened up a whole new world of possibilities for alternative methods of service of process.

Sometimes, a plaintiff may have to attempt service through multiple means, especially in instances where he or she is suing an evasive defendant.³ Often in these instances, the defendant cannot be located for means of personal service, has no permanent address, and has not authorized anyone to accept service of process for him or her. This frustrating situation is a problem for which new technology offers an ideal solution: service of process through social media. The plaintiff could find the defendant’s social networking profile and, by using the personal information listed on the profile, confirm that it belongs to the defendant. The plaintiff could then have a process server issue service attached to a message sent to the

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1. Rio Props., Inc. v. Rio Int’l Interlink, 284 F.3d 1007, 1017 (9th Cir. 2002) (citations omitted).

2. Service of process is the formal means by which a plaintiff desiring to sue notifies the defendant of the action being brought against him. Service is required by both the U.S. Constitution and the Federal Rules of Civil Procedure. U.S. CONST. amend. XIV, § 1; FED. R. CIV. P. 4(e).

3. See Toler v. City of Cookeville, 952 S.W.2d 831, 832 (Tenn. Ct. App. 1997) (concluding that the defendant was attempting to evade service when he was in his condo while the plaintiff’s attorney’s paralegal attempted to serve him but would not open the door; was living in the condo where service was attempted; and was the man who ran into the home when approached by the paralegal); Stephanie Francis Ward, *Our Pleasure to Serve You: More Lawyers Look to Social Networking Sites to Notify Defendants*, ABA J. (Oct. 2011) (“You would be surprised at how many people evade service but update their Facebook profile on a near daily basis . . .”).

inbox associated with the defendant's profile. A feature unique to social media would then allow a "read receipt" to be issued, listing the date and time the message was read.⁴

Because of social media's pervasiveness, the legal system would be doing itself an injustice to ignore this new technology as a means to effectuate service when other methods fail. This Comment argues that the legal system should recognize the value of social media and allow service to be accomplished through it.⁵ Part I provides an overview of the historical development of service of process and surveys the development of modern communication and technology, the development of social media, and the development of electronic documentation in the legal system. Part II discusses how in the story of alternative service of process, service through social media is the next chapter. This Part also reviews the constitutionality of service of process through social media and investigates due process concerns, while arguing that social media are as good as or better than the currently utilized alternative methods. Part III explains the technicalities of how service through social media would be accomplished and suggests factors courts should weigh in deciding when social media service of process would be permissible.⁶

Ultimately, this Comment suggests that social media are a viable alternative for effectuating service in the 21st century and beyond.

I. SURVEYING SERVICE OF PROCESS AND THE SHIFT IN ELECTRONIC COMMUNICATION

Overall, communication has advanced far beyond what it was a century, half a century, or even a decade ago.⁷ Examining the development of service and the development of technological

4. See *infra* Part III.C discussing "read receipts."

5. This Comment is not advocating that service through social media should replace any of the traditional methods of service.

6. To be clear, this Comment proposes service could be permissible through social media sites generally. Presently, Facebook is the only site that contains a platform and structure suitable to service of process under the requirements listed *infra* Part III.B. It should be noted, however, that new social media sites, or even currently existing sites, might become suitable media for effectuating service in the near future.

7. See *GHN: About*, IEEE GLOBAL HIST. NETWORK, <http://www.ieeeghn.org/wiki/index.php/GHN:About> (last visited Nov. 8, 2013) (providing statement about society and technology from the Institute of Electrical and Electronic Engineers (IEEE), a non-profit organization committed to the advancement of technology). "Electrical, electronic, and computer technologies dramatically transformed the world during the 19th and 20th centuries. Today they are the cornerstones of humanity's material existence, and they will continue to be powerful forces shaping lives in the 21st century." *Id.*

communications, it seems that service of process methods have coincided with developing technology.⁸

This Part first explains how courts assess service of process and what is required for permissible service. Next, it discusses the evolution of service of process, focusing on alternative service methods while showing major technological advancements throughout the development of service. Finally, it discusses changes in the legal system, which evidence an embrace of new technology and communication.

A. “Poking” into How Courts Assess Service of Process

In the context of litigation, service of process is essential to the initiation of a suit.⁹ The U.S. Supreme Court stated that “[i]n the absence of service of process, a court ordinarily may not exercise power over a party the complaint names as defendant.”¹⁰ The Fifth and Fourteenth Amendments to the U.S. Constitution provide that no state shall “deprive any person of life, liberty, or property without due process of law.”¹¹ In the context of serving notice of suit, due process has been interpreted to mean that every person must be apprised of the litigation against him or her and be afforded an opportunity to be heard.¹²

Therefore, to assess the legality of service, a court assesses whether the method of service used is reasonably calculated to give

8. See *infra* Part I.B.

9. *Hatfield v. King*, 184 U.S. 162, 166 (1902) (“Before any proceedings [can] rightfully be taken against the defendants it [is] essential that either they be brought into court by service of process, or that a lawful appearance be made on their behalf.”). See also *Murphy Bros., Inc. v. Michetti Pipe Stringing Inc.*, 526 U.S. 344, 350 (1999) (“Service of process, under longstanding tradition in our system of justice, is fundamental to any procedural imposition on a named defendant. . . . [Based on this requirement,] one becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend.”).

10. *Murphy Bros., Inc.*, 526 U.S. at 350 (1999). See also *Omni Capital Int’l Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987) (“Before a . . . court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.”); *Mississippi Publ’g Corp. v. Murphree*, 326 U.S. 438, 444–45 (1946) (“[S]ervice of summons is the procedure by which a court . . . asserts jurisdiction over the person of the party served.”).

11. U.S. CONST. amend. XIV, § 1; U.S. CONST. amend. V.

12. *Greene v. Lindsey*, 456 U.S. 444, 449 (1982). See also *Pennoyer v. Neff*, 95 U.S. 714, 741–43 (1877), *overruled in part* by *Shaffer v. Heitner*, 433 U.S. 186 (1977).

notice and whether it complies with statutory requirements.¹³ For service to be effective, it must be *both* constitutionally and statutorily permissible.¹⁴ When assessing if service is statutorily permissible, courts use federal and state rules of civil procedure, then determine sufficient service under the circumstances presented in each case.¹⁵

For cases in federal court, Federal Rule of Civil Procedure 4 establishes the traditional methods of service upon a domestic defendant, which are personal service, delivery to the defendant's dwelling, or delivery to the defendant's agent.¹⁶ If service is still not possible after reasonable efforts have been made to comply with these traditional methods, Rule 4 also permits service by following state law where the action is brought.¹⁷ Thus, the court looks to see if there is a state statute allowing service by an alternate method.¹⁸ If

13. See, e.g., *Miller v. Balt. City Bd. of School Com'rs*, 833 F. Supp. 2d 513, 516 (D. Md. 2011).

14. *Fed. Deposit Ins. Corp. v. Schaffer*, 731 F.2d 1134, 1136 (4th Cir. 1984) ("[T]o be effective, service of process must comply not only with constitutional requirements, but also with the provisions of the state statute."); *Harlow v. Children's Hosp.*, 432 F.3d 50, 57 (1st Cir. 2005) ("An exercise of jurisdiction must be authorized by state statute and must comply with the Constitution."); *Doe v. Nat'l Med. Servs.*, 974 F.2d 143, 145 (10th Cir. 1992) ("The exercise of personal jurisdiction over a non-resident defendant must comply with the forum state's long-arm statute as well as constitutional due process requirements.");

15. *Miller*, 833 F. Supp. 2d. at 516. See also *Swaim v. Moltan Co.*, 73 F.3d 711, 721 (7th Cir. 1996) ("In federal question cases, the statute giving rise to the cause of action may prescribe rules for service of process upon nonresident corporations and associations. But in the absence of any such provision, service of process is governed by the law of the state in which the district court is located. Thus, under Rule 4(e), a federal court normally looks either to a federal statute or to the long-arm statute of the State in which it sits to determine whether a defendant is amenable to service." (citations omitted)); *Omni Capital*, 484 U.S. at 105; *Dehmlow v. Austin Fireworks*, 963 F.2d 941, 945 (7th Cir. 1992); *United Rope Distribs., Inc. v. Seatriumph Marine Corp.*, 930 F.2d 532, 535 (7th Cir. 1991).

16. FED. R. CIV. P. 4(e).

17. *Id.*

18. For example, the Louisiana Code of Civil Procedure provides that service "may be either personal or domiciliary" just like the federal rules require. LA. CODE CIV. PROC. ANN. art. 1231 (2002). "Personal service is made when a proper officer tenders the citation or other process to the person to be served." *Id.* art. 1232. "Domiciliary service is made when a proper officer leaves the citation or other process at the dwelling house or usual place of abode of the person to be served with a person of suitable age and discretion residing in the domiciliary establishment." *Id.* art. 1234. "Service is made on a person who is represented by another by appointment of court, operation of law, or mandate, through personal or domiciliary service on such representative." *Id.* art. 1235. Additionally, in Louisiana if the defendant is a nonresident, service can be made by registered mail, certified mail, or commercial courier and as a last resort, upon an attorney

service cannot be made under an applicable rule, the plaintiff can also move for alternative service.¹⁹

It is these alternative methods that are most frequently changing.²⁰ These alternative methods are flexible enough to develop with changing technology. As a consequence, service of process has to some extent followed major developments in communication throughout time.

B. Service of Process “Following” the Development of Technology

The oldest and most basic method of service is personal service.²¹ Before the Federal Rules of Civil Procedure were adopted, the U.S. Supreme Court in 1877 decided *Pennoyer v. Neff*. The

appointed by law. LA. REV. STAT. ANN. § 13:3204 (2006). Other states have even more unconventional methods for effectuating service, especially on an evasive defendant. The Alabama Rules of Civil Procedure provide that:

When a defendant avoids service and that defendant’s present location or residence is unknown and the process server has endorsed the fact of failure of service and the reason therefor on the process and returned it to the clerk or where the return receipt shows a failure of service, the court may, on motion, order service to be made by publication. When a defendant is a corporation and the process server has endorsed the fact that the process cannot be served because of the failure of the defendant to elect officers or appoint agents, or because of the absence of officers or agents from the state of incorporation and the state of the corporation’s principal place of business for a period of thirty (30) days from the filing of the complaint or because the officers or agents are unknown, then such defendant shall be deemed to have avoided service and the court may, on motion, order service on such defendant to be made by publication. The mere fact of failure of service is not sufficient evidence of avoidance, and the affidavit required in subdivision (d)(1) of this rule must aver specific facts of avoidance.

ALA. R. CIV. P. 4.3(c).

19. *Grove v. Guilfoyle*, 222 F.R.D. 255, 256 (E.D. Pa. 2004) (“[I]f service cannot be made under the applicable rule . . . the plaintiff may move the court for a special order directing the method of service.’ Before requesting an alternative method of service, a plaintiff must make a ‘good faith’ effort to locate the defendant and properly effectuate service. Alternative methods of service are an ‘option of last resort.’ . . . [G]ood faith efforts might include: (1) inquiries of postal authorities, (2) inquiries of relatives, neighbors, friends and employees of the defendant, and (3) examinations of local telephone directories, voter registration records, local tax records and motor vehicle records.” (footnote omitted) (citations omitted) (quoting P.A. R. CIV. P. 430)).

20. See *infra* Part I.B.

21. See *Pennoyer v. Neff*, 95 U.S. 714 (1877), *overruled in part by* *Shaffer v. Heitner*, 433 U.S. 186 (1977); FED. R. CIV. P. 4(e) (explaining that personal service is accomplished by actual delivery of the summons and complaint to the defendant by a server authorized by law).

Supreme Court ruled that a defendant must receive *personal service* in order for the court to obtain jurisdiction.²² The Oregon law at issue in *Pennoyer* allowed service by publication in a newspaper when the action was against a non-resident and regarded a dispute concerning property located within the state.²³ Utilizing this rule, the plaintiff attempted to effectuate service through publication.²⁴ The Court explained that if property of the defendant was the subject of the action, substituted service of process by publication was an acceptable method.²⁵ However, the Court stated that when the entirety of the action consisted of determining the personal rights and obligations of the defendant, due process of law required personal service.²⁶

At the time of *Pennoyer*, almost all communication, formal and informal, was accomplished in person. Newspapers existed but reported only brief snippets of information, sometimes as short as a sentence.²⁷ The postal system was in operation, but it was slow and expensive.²⁸ The telegraph was available, but it was new at this time.²⁹ No other methods could reasonably be utilized for service of

22. *Pennoyer*, 95 U.S. at 733.

23. *Id.* at 720.

24. *Id.* at 719.

25. *Id.* at 715.

26. *Id.* at 727–34.

27. See James Breig, *Early American Newspapering*, COLONIAL WILLIAMSBURG J., Spring 2003, available at <http://www.history.org/foundation/journal/spring03/journalism.cfm>.

28. See *The History of the United States Postal Service: An American History*, U.S. POSTAL SERVICE (May 2007), http://about.usps.com/publications/pub100/pub100_001.htm#ep998290. The Founding Fathers evidenced their belief in the importance of a connected society by including the establishment of the postal system in the U.S. Constitution. The support for the postal system is significant because widespread communication in the United States began with the postal system. The 19th century witnessed major growth in the United States as a nation and the post office was the “communications system that helped bind the nation together.” *Id.*

29. John Rogers, *150 Years Ago, a Primitive Internet United the USA*, ASSOCIATED PRESS, Oct. 24, 2011, available at http://www.msnbc.msn.com/id/45007641/ns/technology_and_science-tech_and_gadgets/t/years-ago-primitive-internet-united-usa. In 1861, the transcontinental telegraph was created to bring America closer together. For the first time in history, parties could communicate with one another in almost real time. *Id.* The telegraph used Morse Code, a series of dots and dashes signifying different letters and numbers, to transmit messages that would be interpreted by the telegraph receiving the signal. Tomas Nonnenmacher, *History of the U.S. Telegraph Industry*, ECON. HIST. ASS’N (Feb. 2, 2010), <http://eh.net/encyclopedia/article/nonnenmacher.industry.tele.graphic.us>.

process. This historical context explains why the Supreme Court was adamant that service must be effectuated *in person*.³⁰

More than half a century after *Pennoyer*, Congress decided a uniform system of rules was needed, and in 1938 it gave effect to the Federal Rules of Civil Procedure (FRCP).³¹ Among other things, these rules replaced the common law pleading system that was in place at the time of *Pennoyer* and established permissible methods of service of process in federal cases.³² Today, Rule 4(e) of the FRCP contains the traditional methods of service by which a domestic defendant may be served: personal service, delivery to the individual's dwelling accepted by someone of suitable age and discretion, and delivery to an agent authorized to accept service.³³ The FRCP have changed over time, even at one point including service by certified mail as an acceptable means.³⁴

In some situations, these traditional methods prove ineffective. Courts then look to see if service can be effectuated through an "alternative" method, mainly by state law where the action is brought.³⁵ In Louisiana, state law permits personal service and domiciliary service for all ordinary proceedings,³⁶ which mirrors the federal rules. However, in some instances, such as substitution of parties in certain cases, service via publication is permitted.³⁷ These alternative methods are typically employed when the case involves an evasive defendant. Less than ten years after the FRCP were adopted, the Supreme Court began to critically evaluate these alternative state methods of service of process.

30. *Pennoyer v. Neff*, 95 U.S. 714, 741–43 (1877), *overruled in part by* *Shaffer v. Heitner*, 433 U.S. 186 (1977).

31. *Current Rules of Practice & Procedure*, ADMIN. OFF. U.S. CTS., <http://www.uscourts.gov/RulesAndPolicies/rules/current-rules.aspx> (last visited Nov. 8, 2013).

32. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 590 (2007); FED. R. CIV. P. 4(e).

33. FED. R. CIV. P. 4(e).

34. *Id.* practice cmt. Service by mail was permitted at one point to alleviate the burden on process servers and justified by the fact that the postal service was such a reliable and widely used method of communication at the time. *Id.*

35. Federal Rule of Civil Procedure 4(e) includes as the first option of service "following state law where the action is brought." Therefore, excluding this from the "traditional" methods is not completely correct. However, because state law service statutes are often more liberal and unconventional, they are often seen as, and referred to as, "alternative" or "substituted" methods. Lauren A. Rieders, *Old Principles, New Technology, and the Future of Notice in Newspapers*, 38 HOFSTRA L. REV. 1009, 1021 (2010) (discussing the decreased use of newspapers and proposing use of online newspapers for service of process). See, e.g., N.Y. C.P.L.R. 308 (MCKINNEY 2001). See also *supra* note 19 and accompanying text.

36. LA. CODE CIV. PROC. art. 1232, 1234 (2013).

37. *Id.* art. 803.

In 1950, the Supreme Court decided *Mullane v. Central Hanover Bank & Trust*.³⁸ In the 73 years between *Pennoyer* and *Mullane*, America had changed drastically. The country's development and commercial expansion rendered personal service unworkable in many instances.³⁹ In *Mullane*, the Central Hanover Bank and Trust Company had acquired a trust fund and wished to settle one of the accounts of the fund.⁴⁰ The only notice given to the beneficiaries of the trust was by publication in a local newspaper, which was the permissible alternative method under New York banking law.⁴¹ The law required the petitioner to publish the notice not less than once per week for four weeks.⁴² The only notice that was required was by newspaper publication.⁴³ The Court approved of publication as a constitutionally permissible means of notice when no other reasonable methods could be employed and when the whereabouts of the persons to be notified were unknown.⁴⁴ The Court stated that depending on the circumstances, forms of service are permissible so long as they are not "substantially less likely to bring home notice" than other available methods.⁴⁵

Following *Mullane*, technology and service continued to evolve. Courts handed down decisions allowing for alternative methods of service that coincided with developments in technology.⁴⁶ Notably, these methods did not replace traditional methods of service but were utilized as a last resort where due diligence had been exercised to ascertain the whereabouts of the defendant.⁴⁷ Technology played a part in the type of substituted methods courts employed in situations where no other service would prove effective.

C. Alternative Notice and Developing Technology in the Late 20th Century

In 1980, *New England Merchants National Bank v. Iran Power Generation & Transmission Co.* permitted service via Telex and was one of the first cases after *Mullane* to utilize new technology for

38. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

39. Jeremy Colby, *You've Got Mail: The Modern Trend Towards Universal Electronic Service of Process*, 51 BUFF. L. REV. 337, 340-41 (2003).

40. *Mullane*, 339 U.S. at 312.

41. *Id.* at 309-10.

42. *Id.* at 310.

43. *Id.*

44. *Id.* at 317-18.

45. *Id.* at 315.

46. *See infra* Part I.C.

47. *New Eng. Merch. Nat'l Bank v. Iran Power Generation & Transmission Co.*, 495 F. Supp. 73, 81 (S.D.N.Y. 1980).

service.⁴⁸ This case was decided less than two decades after the Telex technology had been developed.⁴⁹ In *New England Merchants*, the U.S. district court not only permitted but *directed* the plaintiffs to serve the defendant via Telex⁵⁰ “to make absolutely sure that the [defendants had] notice.”⁵¹ The court stated that it was well aware that service via Telex had little to no precedent.⁵² The court reasoned that electronic communication provides instantaneous transmission of notice, stating that:

Courts . . . cannot be blind to changes and advances in technology. No longer do we live in a world where communications are conducted solely by mail carried by fast sailing clipper or steam ships. . . . No longer must process be mailed to a defendant’s door when he can receive complete notice at an electronic terminal inside his very office, even when the door is steel and bolted shut.⁵³

The rationale used by the court to support service via Telex also provides strong support for the use of new technology for service of process. Just a decade after Telex, the Internet was created and has quickly become one of the most powerful technological developments of modern times.

In the early 1990s, the Internet was made available to the public, and a worldwide phenomenon began.⁵⁴ The Internet has grown rapidly since its creation. By the early 2000s, half of the homes in the United States had a personal computer, and almost half of those

48. *Id.*

49. The Telex system was established in 1962 in the United States. *Telex*, ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/586267/telex> (last visited Nov. 8, 2013) (“Telex systems originated in the United Kingdom and several other European countries during the early 1930s. In 1931 the American Telephone and Telegraph Company (AT&T) introduced its teletypewriter exchange service, TWX. Telex systems in the United States continued to be operated by private corporations, while in most other countries they were operated by government agencies responsible for postal, telegraph, or telephone services.”).

50. The Telex system transmitted typed messages over a network, usually a telephone line, and then printed or displayed the messages on a monitor. *Id.*

51. *New Eng. Merch. Nat’l Bank*, 495 F. Supp. at 81.

52. *Id.*

53. *Id.*

54. Cameron Chapman, *The History of the Internet in a Nutshell*, SIX REVISIONS (Nov. 15, 2009), <http://sixrevisions.com/resources/the-history-of-the-internet-in-a-nutshell/>. See also Marwan M. Kraidy, *The Internet as a Mass Communication Medium*, JOURNALISM & MASS COMM. J., <http://www.eolss.net/sample-chapters/C04/E6-33-03.pdf>.

had access to the Internet.⁵⁵ Today, the Internet connects millions of computers around the globe, allowing communication through multiple interfaces, namely e-mail and websites.⁵⁶ Its users can “send and receive digital data from a virtually infinite number of sources.”⁵⁷

The advent of the Internet greatly expanded the use of e-mail and allowed the American public access to this new technology.⁵⁸ E-mail quickly became a major method of communication and in 2011, the number of worldwide e-mail accounts was estimated at around 3.1 billion.⁵⁹

Following the lead of technology once again, only a few decades after e-mail and fax were established,⁶⁰ a court in 2000 allowed service through these methods in *In re International Telemedia Associates, Inc.*⁶¹ In 2000, the bankruptcy court in *In re International Telemedia* authorized service on an elusive defendant by fax, e-mail, and mail to the last known address.⁶² The court described the defendant as a “moving target,” which made it virtually impossible for the plaintiff to effect service on him.⁶³ The defendant refused to provide a mailing address but provided a fax number and an e-mail address and stated that he wished to use them

55. Alladi Venkatesh et al., *Evolving Patterns of Household Computer Use: 1999–2010*, April 2011, <http://crito.uci.edu/papers/2011/HouseholdComputerUse.pdf> (“By 2009, nearly 70% of U.S. households were estimated to be using the Internet at home.”).

56. Kraidy, *supra* note 54.

57. *Id.*

58. Craig Partridge, *The Technical Development of Internet Email*, BBN TECHNOLOGIES, April–June 2008, <http://www.ir.bbn.com/~craig/email.pdf>.

59. QUOC HOANG & SARA RADICATI, THE RADICATI GRP., E-MAIL STATISTICS REPORT, 2011–2015 (2011), <http://www.radicati.com/wp/wp-content/uploads/2011/05/Email-Statistics-Report-2011-2015-Executive-Summary.pdf>.

60. “[E]-mail, in full electronic mail, messages transmitted and received by digital computers through a network. An e-mail system allows computer users on a network to send text, graphics, and sometimes sounds and animated images to other users.” *Email*, ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/183816/e-mail> (last visited Dec. 28, 2013). Standard fax transmission was adopted in 1980. It received widespread enjoyment because of its low cost and ease of use. Fax machines scan printed material and transmit the information over a telephone network to another fax machine, which reproduces the scanned document. *Fax*, ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/199972/fax> (last visited Nov. 6, 2013). *See also* Partridge, *supra* note 58.

61. 245 B.R. 713, 718–20 (Bankr. N.D. Ga. 2000) (allowing service by facsimile and electronic mail where the defendant claimed to be traveling abroad and refused to identify his location at any given time and where plaintiff found a physical address but had no indication that the defendant resided there.).

62. *Id.* at 720.

63. *Id.* at 718.

in future correspondence.⁶⁴ Under these circumstances, the court authorized service through these methods because the defendant had indicated that these were his preferred modes of communication.⁶⁵ The court also stated that authorization of service by e-mail and other alternative means had little to no precedent in its circuit or any other.⁶⁶ Moreover, the court observed the rapid rate at which the number of Internet users was rising and recognized the need to adapt.⁶⁷

Two years later, the U.S. Court of Appeals for the Ninth Circuit also approved of service of process over the Internet in *Rio Properties, Inc. v. Rio International Interlink*.⁶⁸ In *Rio* the court allowed e-mail service upon a foreign defendant.⁶⁹ The plaintiff was unable to serve the defendant in the United States and could not find a physical address in Costa Rica.⁷⁰ The only address available for the defendant was an e-mail address, which the defendant designated as its preferred method of communication.⁷¹ The court stated that, despite the absence of any authority, service of process via e-mail was proper under the circumstances because it was “reasonably calculated to provide notice and opportunity to respond.”⁷² Further, the court stated that in this case service by e-mail was the method of service most likely to reach the defendant because the defendant structured its business so that it could *only* be contacted via e-mail.⁷³ The court asserted that a method reasonably calculated to reach the defendant and likely to provide actual notice was surely permissible.⁷⁴ “Notably, however, while the *Rio Properties* court endorsed service of process by email in that case, it was ‘cognizant of its limitations.’ Among other things, it noted that

64. *Id.*

65. *Id.*

66. *Id.* at 719.

67. *Id.*

68. 284 F.3d 1007 (9th Cir. 2002).

69. *Id.* at 1016.

70. *Id.* at 1013.

71. *Id.*

72. *Id.* at 1017; *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 318 (1950).

73. *Rio Properties*, 284 F.3d at 1013.

74. *Id.* at 1016–17. Evidencing a belief that e-mail was among the accepted methods of alternative service, the court stated in *Rio* that “trial courts have authorized a wide variety of alternative methods of service including publication, ordinary mail, mail to the defendant’s last known address, delivery to the defendant’s attorney, telex, and most recently email” even though there is no specific statutory authorization for these methods. *Id.* at 1016.

often there is no way to confirm that an email message, along with all its attachments, was actually received.”⁷⁵

Social media can provide the solution to the biggest problem that e-mail service faces: For e-mail, there is no confirmation that the electronic communication was actually received.⁷⁶ Additionally, communication is shifting more toward social networks.⁷⁷ The rise in the number of e-mails sent and received each day has slowed due to increased use of other forms of communication, particularly social networks.⁷⁸ In fact, social media use has been increasing at a rapid pace since its inception.⁷⁹ Its prevalence in modern society makes it an important part of everyday life and increases its potential as a very useful tool for the legal system.

D. Development of Social Media

Social media have become an important part of many Americans’ everyday lives.⁸⁰ Because of its connectivity and ease of use, social networking has continuously shown rapid growth.⁸¹ In 2011, there were 2.4 billion social networking accounts worldwide, both consumer and corporate.⁸² The number of American adults using a

75. *Liberty Media Holdings, LLC v. Sheng Gan*, Civil Action No. 11-CV-02754-MSK-KMT, 2012 WL 122862, at *2 (D. Colo. Jan. 17, 2012). In *Liberty Media Holdings*, the plaintiff was attempting to serve a defendant who was the owner and operator of a certain Internet site. *Id.* at *1. The court found that the plaintiff had taken considerable measures to attempt to serve the defendant. *Id.* at *3. The defendant’s actual street address and geographical location were unknown, and the plaintiff made extensive efforts to find information about the defendant’s location without any luck. *Id.* Unfortunately for the plaintiff, the *Liberty* court assessed that because there was no indication that the defendant had actual notice of the suit and was simply avoiding formal service and because the defendant did not hold out that e-mail was its preferred method of communication like the defendant in *Rio*, it found service through e-mail to be impermissible. *Id.* at *3–4. It stated that while service by e-mail may be a last resort, “to allow Plaintiff to complete service of process by e-mailing the complaint and summons to these e-mail addresses without any confirmation of receipt would be akin to allowing plaintiff to slide a complaint and summons under the front door of what appears to be an abandoned residence.” *Id.* at *4. Ultimately, the court reasoned, due process requires more. *Id.*

76. See *infra* Part III.C.

77. HOANG & RADICATI, *supra* note 59, at 4.

78. *Id.* at 3.

79. *Id.* at 4.

80. *Id.*

81. *Id.* at 3–4.

82. *Id.* at 4.

social networking site nearly doubled from 2008 to 2010.⁸³ Today, almost 60% of American adults who use the Internet use a social networking site.⁸⁴

Social media allow users to associate with one another using technology, social interaction, and collaborative connectivity.⁸⁵ Users are typically individuals, but many businesses and other organizations also participate in social networking.⁸⁶ To create an account on most social networking sites, a user must enter personal information, select a password, and enter an e-mail address and sometimes a telephone number so that the account can be verified. To join Facebook, for example, an interested user creates a free online “profile” by entering his or her name, birthday, gender, and e-mail address.⁸⁷ The user must then confirm the e-mail address by accessing the e-mail account listed during the signup process.⁸⁸ After the user confirms the e-mail account, he or she must verify the account by listing a phone number.⁸⁹ The user can then begin connecting with other users on the site and sharing information. The user may use the account to add friends,⁹⁰ post on friends’ walls,⁹¹ upload photos, add personal information, change privacy settings, post status updates,⁹² and send private messages⁹³ to other users.⁹⁴ It

83. KEITH HAMPTON ET AL., PEW RESEARCH CTR., SOCIAL NETWORKING SITES AND OUR LIVES (June 16, 2011), *available at* <http://pewinternet.org/Reports/2011/Technology-and-social-networks.aspx>.

84. *Id.*

85. *Types of Social Media*, HOWTO.GOV, <http://www.howto.gov/social-media/social-media-types> (last visited Oct. 29, 2013).

86. Christine Dugas, *Small Businesses Get Personal with Social Media*, USA TODAY (Nov. 12, 2012, 9:58 AM), <http://www.usatoday.com/story/money/business/2012/11/11/small-business-use-social-media/1692851/>. *See also* Rahim Kanani, *How Facebook Is Changing the World for Good*, FORBES, May 29, 2012, <http://www.forbes.com/sites/rahimkanani/2012/05/29/how-facebook-is-changing-the-world-for-good/>.

87. *Create an Account*, FACEBOOK, <http://www.facebook.com/help> (last visited Oct. 29, 2013).

88. *Confirm Your E-mail Address*, FACEBOOK, <http://www.facebook.com/help> (last visited Oct. 29, 2013).

89. *Verify Your Account*, FACEBOOK, <http://www.facebook.com/help> (last visited Oct. 29, 2013).

90. “Adding friends” allows Facebook users to see information listed on each other’s account pages. *See Finding Friends*, FACEBOOK, <https://www.facebook.com/help/www/336320879782850/> (last visited Nov. 8, 2013).

91. “Posting” is where one user who is “friends” with another user types a message on the other’s profile wall. Each user has their own “wall” where comments and photos are displayed. *How to Post & Share*, FACEBOOK, <https://www.facebook.com/help/www/333140160100643/> (last visited Nov. 8, 2013).

92. “Status updates” are each user’s own short postings that can be changed at any time. These are often comments such as, “Saw a great movie last night!” or

is precisely these interactive features, combined with the ease of use, that make social networking so popular.

Facebook is by far the largest social networking site and was created to allow users to connect for a multitude of purposes.⁹⁵ Less than ten months after it was created, this social media giant had one million users, and one year later, six million users.⁹⁶ As of October 2012, Facebook had reached one billion active users.⁹⁷ More than half of Facebook's users are active daily users, spending about seven hours on the site in a month, or about 15 minutes a day, often times more.⁹⁸ Notably, time spent on Facebook accounts for more than one-seventh of all time spent online.⁹⁹

Over the years, the uses of social media have become increasingly diverse. Businesses can create pages¹⁰⁰ that collect fans,¹⁰¹ purchase advertising space, and employ targeted marketing tactics that did not exist just a few short years ago.¹⁰² Businesses

"*Pennoyer* was the best case I have read so far in law school!" This information shows up on other friends' "News Feeds." *How to Post & Share*, *supra* note 91. A user's "News Feed" is a continuous stream of updates from friends or other Facebook pages. *Facebook Help Center: Glossary of Terms*, FACEBOOK <https://www.facebook.com/help/www/219443701509174> (last visited Nov. 8, 2013).

93. "Private messages" are essentially e-mails from one Facebook user to another sent and received through the Facebook website. *Facebook Help Center: Glossary of Terms*, *supra* note 92.

94. *See supra* notes 90–93.

95. *Facebook Timeline*, FACEBOOK, <http://newsroom.fb.com/Timeline> (last visited Dec. 28, 2013); *Key Facts*, FACEBOOK, <http://newsroom.fb.com/content/default.aspx?NewsArea> (last visited Nov. 8, 2013). The vast majority of social network users are on Facebook. HAMPTON ET AL., *supra* note 83 (explaining that 92% of Social Network Site users are on Facebook). As of 2012, Facebook is the world's largest social network. Dave Lee, *Facebook Surpasses One Billion Users as It Tempts New Markets*, BBC NEWS, Oct. 5, 2012, <http://www.bbc.co.uk/news/technology-19816709>.

96. *Facebook Timeline*, *supra* note 95.

97. *Id.*

98. *Key Facts*, *supra* note 95; Zak Stambar, *Nearly 15% of the Time Consumers Spend Online is on Facebook*, INTERNET RETAILER, Feb. 13, 2012, <http://www.internetretailer.com/2012/02/13/nearly-15-time-consumers-spend-online-facebook>.

99. *Stambar*, *supra* note 98.

100. "Pages" are accounts businesses can create to promote their services or products. *Facebook Help Center: Glossary of Terms*, *supra* note 92.

101. "Fans" are the business equivalent of "friends." A Facebook user can "like" a page, after which that user will be listed on that page as a "fan." *See Facebook Help Center: Glossary of Terms*, *supra* note 92.

102. Kermit Pattison, *How to Market Your Business with Facebook*, N.Y. TIMES, Nov. 11, 2009, <http://www.nytimes.com/2009/11/12/business/small-business/12guide.html?pagewanted=all>. This kind of advertising is much less

with an active online social media presence benefit notably from the exposure.¹⁰³ Other non-business entities have used social media as a platform to effect social change, revolutionizing the way political and social actions are facilitated.¹⁰⁴ For example, the 2008 election marked a turning point in electoral politics, as all presidential candidates made significant efforts to connect with voters through social media to garner support and, ultimately, votes.¹⁰⁵ In addition to these uses, social media have also transformed into a modern source of news for the average user.¹⁰⁶ Facebook is the second most popular referral site for news found on the web and has an audience vastly larger than any single news organization.¹⁰⁷

The varied uses of social media not only show their prevalence in today's world but also confirm their legitimacy. The widespread use of this media for a multitude of purposes evidences that society heavily relies on them for everyday activities. Notably, this

expensive than traditional advertising and provides access to a more direct audience, especially for local businesses. *Id.*

103. Businesses that have spent time cultivating their social media presence have seen a positive increase in revenue. Shea Bennett, *What Does Social Media Success Mean for Your Business?*, MEDIA BISTRO (May 8, 2012, 8:00 AM), http://www.mediabistro.com/alltwitter/social-media-business-roi_b22274.

104. Nancy Scola, *Despite Negative Press, Facebook is a Powerful Agent for Social Change*, ALTERNET (Apr. 23, 2008), http://www.alternet.org/story/83196/despite_negative_press%2C_facebook_is_a_powerful_agent_for_social_change.

105. Supporters of the Obama campaign got the word out faster, easier, and cheaper than traditional campaigning in the "real" world. Sara Inés Calderón, *Facebook Is an Increasingly Important Part of Elections Around the World*, INSIDE NETWORK (Jan. 25, 2010), <http://www.insidefacebook.com/2010/01/25/facebook-is-an-increasingly-important-part-of-elections-around-the-world/>. See also Matthew Fraser & Soumitra Dutta, *Barack Obama and the Facebook Election*, U.S. NEWS & WORLD REP. (Nov. 19, 2008), <http://www.usnews.com/opinion/articles/2008/11/19/barack-obama-and-the-facebook-election>.

106. Kenneth Olmstead et al., *Navigating News Online: Facebook is Becoming Increasingly Important*, PEW RES. JOURNALISM PROJECT (May 9, 2011), http://www.journalism.org/analysis_report/facebook_becoming_increasingly_important.

107. Essentially, users go to Facebook for their news and are then directed to a hard news source after seeing the information on their own Facebook "News Feed." Hayley Tsukayama, *Facebook a Growing Source for News, Report Says*, WASH. POST (May 9, 2011), http://www.washingtonpost.com/blogs/faster-forward/post/facebook-a-growing-source-for-news-report-says/2011/05/09/AFXj48aG_blog.html (discussing the Pew Research Center's Project for Excellence in Journalism study that shows social media websites, especially Facebook, are becoming a growing source of news). See also AMY MITCHELL ET AL., PEW RESEARCH CTR., *THE STATE OF THE NEWS MEDIA 2012: WHAT FACEBOOK AND TWITTER MEAN FOR NEWS* (2012), available at <http://stateofthemediamedia.org/2012/mobile-devices-and-news-consumption-some-good-signs-for-journalism/what-facebook-and-twitter-mean-for-news/>.

increased use of new technology is not just present in communication methods but can also be seen in the legal system.

E. Electronic "Activity Log" of the Legal System

Numerous legal processes are now taking place online. One major example is filing court documents, which was previously accomplished by paper only.¹⁰⁸ Now, electronic case filing¹⁰⁹ is available for almost every court in the federal court system.¹¹⁰ Some states have even adopted local rules that require electronic filing of court documents.¹¹¹ Additionally, the U.S. Patent and Trademark Office has now made patent applications available to be filled out and processed online.¹¹²

Electronic discovery has also brought about major changes in discoverable documents and discovery rules.¹¹³ Traditional discovery only pertained to tangible documents and things.¹¹⁴ Electronic discovery has greatly increased the range of discoverable information, from basic word processing documents to electronic

108. H. Craig Hall, Jr., *Electronic Filing in Federal Court: Where are We Now?*, 20 UTAH B.J. 32 (2007).

109. *Case Management/Electronic Case Files*, U.S. CTS., <http://www.uscourts.gov/FederalCourts/CMECF.aspx> (last visited Nov. 6, 2013). Case Management/Electronic Case Filing (CM/ECF) allows courts to maintain documents for each case in electronic form. *Id.*

110. *See Courts Accepting Electronic Filings*, U.S. CTS., <http://www.uscourts.gov/FederalCourts/CMECF/Courts.aspx> (last visited Nov. 6, 2013). CM/ECF implementation began in U.S. bankruptcy courts in 2001, U.S. district courts in 2002, and U.S. appellate courts in 2004. *Id.*

111. *Electronic Filing and Case Management*, U.S. DISTRICT CT. CENT. DISTRICT OF CAL., <http://www.cacd.uscourts.gov/e-filing> (last visited Nov. 8, 2013).

112. *About EFS-Web*, U.S. PAT. & TRADEMARK OFF., <http://www.uspto.gov/patents/process/file/efs/index.jsp> (last visited Sept. 26, 2012) ("EFS-Web is the United States Patent and Trademark Office's (USPTO's) Web-based patent application and document submission solution. Using EFS-Web, anyone with a Web-enabled computer can file patent applications and documents without downloading special software or changing document preparation tools and processes.").

113. FED. R. CIV. P. 26 (stating that discovery includes "electronically stored information"). The committee note for the 2006 change to Rule 26 explains that 26(a)(1)(B) was amended to recognize "that a party must disclose electronically stored information as well as documents that it may use to support its claims or defenses." FED. R. CIV. P. 26 advisory committee's note (2006 amend. subdiv. (a)). And also that "[t]he term 'electronically stored information' has the same broad meaning in Rule 26(a)(1) as in Rule 34(a)." *Id.*

114. FED. R. CIV. P. 34, advisory committee notes ("As originally adopted, Rule 34 focused on discovery of 'documents' and 'things.'").

communication, such as e-mail.¹¹⁵ “The 2006 amendments to Fed. R. Civ. P. 34 clarified that discovery of electronically stored information stands on equal footing with discovery of paper documents.”¹¹⁶ Social media also possess discoverable information, giving attorneys increased opportunities to dig into the lives of litigants.¹¹⁷

Even though the legal system has embraced new technology in some ways, there is still room for improvement. Allowing social media service of process can be seen as the next step in the enhancement of this outdated system.

II. “FRIENDING” SOCIAL MEDIA FOR SERVICE OF PROCESS

The fundamental purpose of service is to afford notice and opportunity to be heard.¹¹⁸ Service of process through social media should be a viable alternative method of service for multiple reasons. First, service through social media is the next step in the development of alternative methods of service of process.¹¹⁹ Second, service via social media meets the constitutional standard developed in *Mullane* because it is likely to provide actual notice and is just as likely to give notice as other alternative methods.¹²⁰ Lastly, service by social media has been permitted by high courts in other countries and one state court in the United States based on rationales that can apply to many future cases.¹²¹ These courts wrestled with the question of whether social media service is a viable alternative and have answered in the affirmative, and the United States should do the same.

A. Social Media’s Constitutional “Profile”

Social media can be seen as the future of service of process, mainly because, if utilized correctly, it is constitutional. The

115. *Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309, 313–15 (S.D.N.Y. 2003).

116. Marjorie A. Shields, J.D., *Discovery of Deleted E-mail and Other Deleted Electronic Records*, 27 A.L.R. 6th 565, § 2 (2007). *See also Zubulake*, 217 F.R.D. at 313–15 (“[e]lectronic documents are no less subject to disclosure than paper records.” (quoting *Rowe Entm’t v. William Morris Agency*, 205 F.R.D. 421, 428 (S.D.N.Y. 2002))); FED. R. CIV. P. 34.

117. John G. Browning, *Digging for the Digital Dirt: Discovery and the Use of Evidence from Social Media Sites*, 14 SMU SCI. & TECH. L. REV. 465, 465 (2011).

118. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). *See also In re Marriage of McKinney*, 120 P.3d 921, 924 (Or. Ct. App. 2005).

119. *See supra* Part I.

120. *See infra* Part II.A.

121. *See infra* Part II.B.

Constitution requires that due process be given in all proceedings.¹²² *Mullane* established the two standards by which due process can be measured, whether the method is “reasonably certain to inform” or at least not substantially less likely to notify than other feasible and customary substitutes.¹²³ In cases where no method is “reasonably certain to inform,” the second standard comes into play, deeming service constitutional so long as it is “not substantially less likely to bring home notice than other of the feasible and customary substitutes.”¹²⁴

Service of process via social media meets the *Mullane* standard for several reasons: (1) it is likely to give actual notice, (2) it is substantially better than service by publication, and (3) it is not substantially less likely to give notice than other alternative methods.

1. The “Like”lihood of Actual Notice Through Social Media Service

The desire to give actual notice is at the heart of service.¹²⁵ The strongest argument for effectuating service of process through social media—Facebook in particular—is that, in many cases, the likelihood of the defendant receiving *actual* notice is extremely high because users of social media typically access their accounts regularly.¹²⁶ Moreover, through social media the plaintiff has the ability to gauge a defendant’s interaction on the account, which makes assessing the chance of actually receiving notice even more accurate.¹²⁷

122. U.S. CONST. amend. XIV, § 1; U.S. CONST. amend. V.

123. *Mullane*, 339 U.S. at 314–15 (1950). According to the *Mullane*, due process is satisfied when “notice is reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.*

124. *Id.* at 313–15. Courts are not constrained by the requirement of actual notice, even though the likelihood of actual notice is a consideration. *Id.* at 319. States have an interest in settlement of disputes within their borders, and placing obstacles in the way of settling these disputes is not justified. *Id.* at 313–14. A balance must be struck between one party’s interests in receiving notice and the other’s interest in bringing the issues to settlement. *Id.* at 314. Regardless, the premise of this Comment is that service via social media is more likely to provide actual notice.

125. See generally *id.*

126. See *supra* Part I.D.

127. Melodie M. Dan, *Social Networking Sites: A Reasonably Calculated Method to Effect Service of Process*, 1 CASE W. RESERVE J.L. TECH. & INTERNET 183, 206 (2010) (“If courts allow a plaintiff to serve a defendant over a social networking site, the plaintiff can more easily gain confirmation that the defendant received notice of the plaintiff’s lawsuit. On a social networking site, a plaintiff

Courts have emphasized that the likelihood of actual notice is significantly more important than strict adherence to traditional methods.¹²⁸ The earliest courts to direct plaintiffs to serve process by newer technological methods admitted that they were doing so without precedent.¹²⁹ Their approval of new methods was based on a strict assessment of the constitutionality of the method—which is centered on whether the defendant would receive actual notice. The court in *In re International Telemedia* noted that “[i]f any methods of communication can be reasonably calculated to provide a defendant with *real notice*, surely those communication channels utilized and preferred by the defendant himself must be included among them.”¹³⁰ The court also noted that the methods it approved, fax and e-mail, had become commonplace in today’s increasingly global society.¹³¹ Similarly, in *Rio Properties Inc.*, the court argued that service by e-mail was not only proper but was more importantly

may be able to determine when a defendant last visited his account, which would show the defendant may have received the notice.”).

128. *O’Meara v. Waters*, 464 F. Supp. 2d 474, 476 (D. Md. 2006) (“Generally, when service of process gives the defendant actual notice of the pending action, the courts may construe Rule 4 liberally to effectuate service and uphold the jurisdiction of the court. When there is actual notice, failure to strictly comply with Rule 4 may not invalidate the service of process; however, plain requirements for the means of effecting service of process may not be ignored.” (citations omitted)). See also *Miller v. Balt. City Bd. of Sch. Comm’rs*, 833 F. Supp. 2d 513, 519 (D. Md. 2011) (holding that the defendant had actual notice of suit and did not argue that maintenance of it would be prejudicial; thus, motion to dismiss was denied); *Swaim v. Moltan Co.*, 73 F.3d 711, 721 (7th Cir. 1996). In *Swaim*, the district court served the defendant in accordance with Indiana Trial Rule 4.15, which states that “[n]o summons or the service thereof shall be set aside or be adjudged insufficient when either is reasonably calculated to inform the person to be served that an action has been instituted against him, the name of the court, and the time within which he is required to respond.” *Id.* This provision only cures technical defects in service, not total failure of service. *Id.* The rules represent the “*ideal* as to the mechanics of . . . how each mode of service should be effectuated, the reasonableness of the method of service actually employed shall be measured by the degree of compliance with those specifics.” *Id.* (emphasis added). Certainly a party cannot completely disregard the rules, but also, literal compliance with them is not necessary. *Id.* The court noted the defendant’s attempts to avoid service stating that “what is rotten in this record is [the defendant’s] continued effort to avoid service of process and frustrate the efficient administration of justice.” *Id.*

129. *New Eng. Merch. Nat’l Bank v. Iran Power Generation & Transmission Co.*, 495 F. Supp. 73, 81 (S.D.N.Y. 1980); *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002); *In re Int’l Telemedia Assocs., Inc.*, 245 B.R. 713, 719 (N.D. Ga. 2000).

130. *Int’l Telemedia*, 245 B.R. at 721 (emphasis added) (using real notice to mean “actual” notice).

131. *Id.* at 718.

the method of service that was the most likely to actually reach the defendant.¹³²

By these standards, sometimes service through social media may very well be the most likely method to actually reach the defendant. In instances where a defendant has proven to be physically elusive but maintains an online profile that is used with regularity, service through social media is not only a viable alternative, but one that would likely afford the defendant actual notice of the litigation against him.

2. Service via Social Media Compared to Service by Publication

Service via social media is significantly better than publication, which is currently a common alternative method.¹³³ Despite the fact that the FRCP do not enumerate service by publication as one of the permissible methods of service, it has been utilized as a last resort for several decades.¹³⁴

However, even *Pennoyer* and *Mullane* understood the questionability of service via publication. *Pennoyer* suggested that the only instance in which it believed notice by publication was appropriate was for proceedings dealing with real property, but even then, the property must have been brought under the control of the court before notice by publication would be appropriate.¹³⁵ Similarly, in the exact moment the Supreme Court allowed publication as an effective means of service, in *Mullane*, it admitted that newspapers were an unreliable means of giving notice.¹³⁶ The Court confessed that “[c]hance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper’s normal circulation the odds that the information will never reach him are large.”¹³⁷ Therefore, even though *Mullane* permitted service through publication, the Court knew that it was not a reliable method of effecting service.

132. *Rio Properties*, 284 F.3d at 1016.

133. Jennifer Lee Case, *Extra! Read All About It: Why Notice by Newspaper Publication Fails to Meet Mullane’s Desire-to-Inform Standard and How Modern Technology Provides a Viable Alternative*, 45 GA. L. REV. 1095, 1098 (2011) (addressing why newspapers should no longer be used for service of process and suggesting an online centralized notification system as the solution).

134. See, e.g., *United States v. Robinson*, 434 F.3d 357, 367–68 (5th Cir. 2005) (holding service by publication in one newspaper was permissible regardless of the fact that another newspaper would have been more likely to give notice).

135. *Pennoyer v. Neff*, 95 U.S. 714, 726–27 (1877).

136. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

137. *Id.* (discussing the slim possibility that notice by publication in newspapers is ever likely to reach the interested party).

The Supreme Court has consistently approved publication as a substitute for other methods of service of process for situations where it is not reasonably possible to employ another method.¹³⁸ The Court reasoned that when the defendant's whereabouts could not be ascertained with due diligence, the use of "an indirect and even probably a futile means of notification" is all that is required.¹³⁹ Both *Pennoyer* and *Mullane* questioned the reliability of publication as an alternative form of service.¹⁴⁰ Courts throughout the years have also continued to question the validity of service via publication.¹⁴¹ The fact that service by newspaper has been criticized while simultaneously permitted shows that courts utilize service by newspaper publication as an ultimate last resort when no other method proves effective.¹⁴²

At the time of *Mullane* and *Pennoyer*, there were no viable alternatives that could uniformly provide notice to a defendant whose whereabouts were unknown. Society now possesses the methods for which courts have been searching. Social networks offer an alternative to a very practical dilemma. They provide access to a defendant whose physical presence cannot be discovered by other means. Social media—not newspapers—are what deliver the news to today's generation.¹⁴³ It is significantly more likely that a person would access his or her social media profile to discover daily news than that he or she would consult a traditional newspaper.¹⁴⁴ *Mullane* stated that a "mere gesture" is not due process.¹⁴⁵ Today, it is clear that service through newspaper publication would be just a mere gesture, much more so than service through social media in most instances. Newspaper readership is in decline,¹⁴⁶ and one-seventh of the world's individuals are on Facebook.¹⁴⁷ Courts

138. *Mullane*, 339 U.S. at 316.

139. *Id.* at 317.

140. *Id.*; *Pennoyer*, 95 U.S. at 726–27.

141. See, e.g., *Boddie v. Connecticut*, 401 U.S. 371, 382 (1971) ("[S]ervice by publication . . . is the method of notice least calculated to bring to a potential defendant's attention the pendency of judicial proceedings."); *Polansky v. Richardson*, 351 F. Supp. 1066, 1069 (E.D.N.Y. 1972) ("Service of process by means of publication has long been constitutionally suspect."); *Abu-Dalbouh v. Abu-Dalbouh*, 547 N.W.2d 700, 703 (Minn. Ct. App. 1996) ("[S]ervice by publication is not a reliable means of notifying interested parties . . .").

142. *Brady v. Brauer*, 529 A.2d 159, 162 (Vt. 1987) (asserting that the use of newspaper publication is based on the *total* inability of other methods to provide notice).

143. Pattison, *supra* note 102.

144. See *supra* Part I.D.

145. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

146. Rieders, *supra* note 35, at 1028.

147. *Facebook Timeline*, *supra* note 95 (stating that "one billion users are active on Facebook"); *U.S. and World Population Clocks*, U.S. CENSUS BUREAU,

cannot ignore the fact that, for all practical purposes, service via Facebook would be constitutional and even more effective than service by publication.

3. Service via Social Media Compared to Fax and E-mail

The portion of the *Mullane* standard that deems notice constitutional if it is not “substantially less likely [than other available methods] to bring home notice” opens the door for a wider variety of methods to be used.¹⁴⁸ From this reasoning it follows that if service through social media is just as likely to provide notice as other unconventional methods, such as fax and e-mail, it should be considered constitutional.

Service through social media is “not substantially less likely” to give notice than service via fax or e-mail.¹⁴⁹ Fax machines are still used today, but their use is declining due to the Internet.¹⁵⁰ Further, new software allows users to sign and type onto documents that previously would have been faxed or mailed.¹⁵¹ Moreover, because of social media’s high probability of affording actual notice, it is also likely to be more reliable than fax transmission in many instances. When a document is sent through fax, there is no way to confirm who actually received the fax and when exactly it was received because a fax receipt only confirms that the document was *sent*. In contrast, social media would be able to provide an even greater guarantee that service is received due to its ability to show when the message is read.¹⁵²

Social media are just as reliable as e-mail for effecting service. Strong analogies can be drawn between the logistics of receiving notice of suit through an e-mail and receiving notice through a Facebook message. For e-mail, there is a method to gauge the certainty of whether the notice will be received by assessing the frequency with which the user accesses their account.¹⁵³ Typically,

<http://www.census.gov/popclock/> (stating that the world population is over seven billion as of November 2013).

148. *Mullane*, 339 U.S. at 315.

149. *Id.* (adopting the “substantially less likely” standard).

150. Nicholas Jackson, *The Age of the Fax Machine is (Finally) Coming to an End*, ATLANTIC (Aug. 2, 2011, 2:16 PM), <http://www.theatlantic.com/technology/archive/2011/08/the-age-of-the-fax-machine-is-finally-coming-to-an-end/242660/>.

151. *Id.*

152. *See infra* note 208.

153. Yvonne A. Tamayo, *Are you Being Served?: E-mail and (Due) Service of Process*, 51 S.C. L. REV. 227, 255 (2000) (discussing how companies can

courts have disallowed e-mail service of process in instances where the defendant's e-mail address was used sporadically because this gave an indication that the e-mail containing service of process was unlikely to reach the defendant.¹⁵⁴ Service through social media should be evaluated in the same way. For example, Facebook profiles can be checked for access by comparing the regularity with which the user is actively participating on the site, allowing assessment of whether the service would likely be received.¹⁵⁵ Additionally, each Facebook user now possesses a username@facebook.com e-mail account that operates exactly like a traditional e-mail account inbox.¹⁵⁶ Attachments, such as official notice of suit, can now be attached to Facebook messages, just as with an e-mail.¹⁵⁷ Due to these similarities, if service via e-mail can be seen as permissible, social media should be as well.

Aside from these similarities, utilizing social media for service has a verification aspect that no other method of alternative service offers. A plaintiff could verify the identity of the online social networking profile by comparing known information to that listed on the profile. In contrast, when service is effected through e-mail, there is no way to verify that the e-mail address belongs to the defendant without the defendant stating so himself. With a social media account, personal information can be compared to see that the account most likely belongs to the defendant.¹⁵⁸

Because of the reliability factors of social media as well as its pervasiveness, service through social media is beginning to experience acceptance around the world. Other countries have struggled with defining how and when service through this new media should be used but have permitted it. These instances of social media service abroad provide a strong framework through which courts in the United States should base their assessments.

purchase software that sends a notification to the sender that confirms not only when the e-mail is delivered but also when the recipient opens the e-mail).

154. Svetlana Gitman, *(Dis)service of Process: The Need to Amend Rule 4 to Comply with Modern Usage of Technology*, 45 J. MARSHALL L. REV. 459, 469 (2012).

155. See *infra* Part III.B.

156. See *How Do I Use My @facebook.com Email Address?*, FACEBOOK, <https://www.facebook.com/help/224049364288051> (last visited Nov. 8, 2013).

157. *Sending a Message: Attachments and more*, FACEBOOK, <https://www.facebook.com/help/326534794098501/> (last visited Nov. 8, 2013).

158. This is, however, dependent upon the circumstances of each situation and the profile of each user. As discussed in Part III.B *infra*, if the user does not show frequent access to his Facebook account, or if the account is set to private, there is no way to ensure that the account is accessed with regularity and therefore service through it would not be constitutional.

B. Other Countries Have "Subscribed" to Social Media Service

Several countries have permitted service of process through social media.¹⁵⁹ Australia was the first.¹⁶⁰ In 2008, an Australian high court permitted service via Facebook in a foreclosure proceeding where the defendants could not be served by traditional means.¹⁶¹ The Australian couple whom the plaintiff sought to serve had moved, switched jobs, and changed telephone numbers. Both personal service and publication were unsuccessful. The plaintiff's counsel was able to compare known personal information of the couple with the information listed on Facebook.¹⁶² The Australian court ordered service to be accomplished by sending a private Facebook message with the legal documents attached to both of the defendants' Facebook accounts.¹⁶³ This method was permissible because the Australian Uniform Civil Procedure Rules include a much broader rule for service of process than Rule 4(e) of the U.S. FRCP.¹⁶⁴ The Australian rule is actually quite similar to the *Mullane* standard.¹⁶⁵ Under the Australian rules, if a document cannot be served personally or on a person within the manner provided by law, "the court may, by order, direct that, instead of service, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person concerned."¹⁶⁶ Interestingly, Facebook officials stated that the company approves of the use of

159. Ward, *supra* note 3 (discussing the use of electronic service and stating that "[w]hile courts in Australia, Canada, New Zealand and the United Kingdom embrace electronic legal notice, it's rare in the United States.") Lawyers in the U.S. claim that many state and federal statutes disallow electronic service of process. *Id.*

160. John G. Browning, *Served Without Ever Leaving the Computer: Service of Process via Social Media*, 73 TEX. B.J. 180, 181 (2010).

161. Lisa McManus, *Service of Process Through Facebook*, LEXISNEXIS (Mar. 10, 2011), <http://www.lexisnexis.com/community/lexishub/blogs/legaltechnologyandsocialmedia/archive/2011/11/09/service-of-process-through-facebook.aspx> (discussing MKM Capital Prop. Ltd. v. Corbo and Poyser, No. SC 608 of 2008). See also Browning, *supra* note 160.

162. McManus, *supra* note 161. See also Browning, *supra* note 160, at 181.

163. McManus, *supra* note 161. See also Browning, *supra* note 160, at 181.

164. McManus, *supra* note 161. Federal Rule of Civil Procedure 4(e) permits service by following state law in the state where the district court is located, delivering to the defendant personally, leaving at the individual's dwelling with a person of "suitable age and discretion who resides there," or by delivering to the defendant's agent for service. FED. R. CIV. P. 4(e).

165. See *supra* note 148 and accompanying text.

166. UNIFORM CIVIL PROCEDURE RULE 10.14, (2005) (Austl.), available at http://www.austlii.edu.au/au/legis/nsw/consol_reg/ucpr2005305/s10.14.html.

its site for service of process because it shows the reliability and recognition that the site has obtained in the modern world.¹⁶⁷

In 2009, a Canadian judge permitted a plaintiff to effect alternative service through several avenues, including sending notice of the action to the defendant's Facebook profile, despite the absence of prior precedent permitting this kind of service.¹⁶⁸ In the same year, a New Zealand High Court permitted service through Facebook for the first time when the defendant's whereabouts were unknown and newspaper service would not be effective.¹⁶⁹ The plaintiff company had difficulty locating the defendant, which made targeted newspaper advertisements impossible.¹⁷⁰ Because the defendant corresponded by e-mail and had a known Facebook page, the court decided, without hesitation, to permit service through Facebook.¹⁷¹

Lower courts in the United Kingdom have also utilized social media for service of process.¹⁷² In 2012, an English high court provided a landmark ruling allowing plaintiffs in Britain to use Facebook for serving a claim due to difficulty in locating one of the parties.¹⁷³ An attorney for one of the parties stated that because this ruling was at such a high level, it is likely that this type of service could become routine.¹⁷⁴ The judge requested proof that the defendant was the account holder and accessed the site regularly.¹⁷⁵

167. Browning, *supra* note 160, at 180. Facebook supported the decision handed down by an Australian court that allowed service of process via its site. A Facebook spokesman said that the company was pleased to have a court validate it as a reliable, secure, and private medium for communication. *Id.*

168. McManus, *supra* note 161 (discussing Knott v. Sutherland (5 Feb. 2009), Edmonton 0803 02267 (Can. Alta. Q.B.M.)).

169. McManus, *supra* note 161 (discussing Axe Market Gardens v. Craig Axe CIV: 2008-485-2676) (H.C. Wellington) (Mar. 16, 2009); Allison Ferguson & Felicity Monteiro, *High Court Allows Service of Proceedings on Facebook*, INT'L L. OFF. (May 19, 2009), available at <http://www.wilsonharle.com/high-court-allows-service-of-proceedings-on-facebook-2/>.

170. Ferguson & Monteiro, *supra* note 169.

171. *Id.* In addition to reasoning that the defendant was unable to be located but frequented his social media webpage, the court also reasoned that these methods of alternative service were necessary to prevent the defendant from further frustrating proceedings. *Id.*

172. In 2011, the Hastings County Court in East Sussex permitted substituted service through Facebook. Alan C. W. Chiu et al., *Service of Process via Online Social Media*, MARTINDALE-HUBBLE (Apr. 4, 2011), http://www.martindale.com/intellectual-property-law/article_Mayer-Brown-JSM_1263122.htm.

173. Katherine Rushton, *Legal Claims Can Be Served via Facebook*, *High Court Judge Rules*, TELEGRAPH (Feb. 21, 2012, 11:56 AM), <http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/9095489/Legal-claims-can-be-served-via-Facebook-High-Court-judge-rules.html>.

174. *Id.*

175. *Id.*

The plaintiffs verified the defendant's account by providing evidence that the defendant was friends with colleagues working for the same company and was an active user because he had recently accepted friend requests.¹⁷⁶ Verification of the account and evidence of use have both rightfully become the two most essential requirements for social media service.¹⁷⁷ Not many courts in the United States have outright addressed the topic of social media service, but the ones that have show a different take on its permissibility.

C. United States's Current "Status" on Social Media Service

Courts in the United States, unlike those of other countries, have not been as receptive to the idea of service through social media. A New York district court addressed the issue of service through Facebook in *Fortunato v. Chase Bank USA*.¹⁷⁸ In *Fortunato*, the plaintiff was unable to find a physical address for the defendant.¹⁷⁹ The plaintiff submitted an application to serve by e-mail, Facebook, publication, and delivery to the mother of the defendant.¹⁸⁰ The court denied the request for service via all other nontraditional methods except service by publication.¹⁸¹ Allowing service by publication was not likely to reach the defendant. Doing so in this case, the court was simply employing a well-known yet outdated method. The New York court claimed that the reason it did not allow service of process through Facebook was because it was "unorthodox."¹⁸² This reasoning runs contrary to other decisions permitting service through nontraditional methods. Courts permitting service through nontraditional methods such as Telex, fax, and e-mail have all stated that there was no precedent for what they were permitting. However, because the facts of these cases showed a nontraditional method was the best way to achieve a substantial likelihood of actual notice, the courts allowed such a method even though it was "unorthodox."¹⁸³ Arguing that a method

176. *Id.*

177. These social media service requirements and others are discussed in Part III.B.

178. No. 11 Civ. 6608(JFK), 2012 WL 2086950, at *1 (S.D.N.Y. June 7, 2012).

179. *Id.*

180. *Id.* at *3.

181. *Id.*

182. *Id.*

183. *New Eng. Merch. Nat'l Bank v. Iran Power Generation & Transmission Co.*, 495 F. Supp. 73, 81 (1980); *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002); *In re Int'l Telemedia Assocs., Inc.*, 245 B.R. 713, 719 (Bankr. N.D. Ga. 2000).

of service cannot be utilized because it is unorthodox is contrary to the development of service and in direct opposition with the reasoning set forth in *Mullane*.

Moreover, a Minnesota county court approved of service through social media—even before *Fortunato*. In *Mpafe v. Mpafe*, a Minnesota court ordered service of process for divorce proceedings by e-mail, Facebook, Myspace, or other social networking site.¹⁸⁴ The court order stated that the petitioner had been unable to locate the respondent and prior attempts at service had been unsuccessful.¹⁸⁵ The court considered notice by publication but stated that it was unlikely that the respondent would ever see this type of notice.¹⁸⁶ The court reasoned that service by general delivery mail would be a waste of postage.¹⁸⁷ The court approved of service by e-mail and social media based on the reasoning that it would be more likely for the respondent to receive notice on the Internet.¹⁸⁸ The court understood that service by publication was antiquated and unreasonably expensive.¹⁸⁹ It deemed service on the Internet sufficient and complete when posted so long as it utilized the same information and timing requirements assessed for service by publication.¹⁹⁰

The *Mpafe* court understood the fundamentality of service through a reasonable, yet effective means.¹⁹¹ “Service is critical, and technology provides a cheaper and hopefully more effective way of finding [a] respondent.”¹⁹² Today, plaintiffs have options for alternative methods for service of process that were unheard of at the time of *Mullane*. E-mail and social media did not exist, and

184. MN No. 27-FA-113452 (Hennepin Cnty. Court, MN 2011). The court also included service through “information that would appear through an Internet search engine such as Google.” *Id.*

185. *Id.*

186. *Id.*; Ward, *supra* note 3, at 14 (noting that Judge Burke, presiding over *Mpafe*, stated that “[n]obody . . . is going to look at the legal newspaper to notice that their spouse wants to get divorced”).

187. *Mpafe*, MN No. 27-FA-113452 (Hennepin County Court, MN May 10, 2011).

188. *Id.*

189. *Id.*

190. *Id.* (“It shall be considered sufficient service for Petitioner to serve Respondent by publication on the internet. All information and timing requirements that would go into a newspaper shall be posted online. Petitioner may choose the format in which they believe is most likely that Respondent will receive notice. This may include but is not limited to the following: Contact via any facebook, myspace, or other social networking site, Contact via email, Contact through information that would appear through an internet search engine such as Google.”).

191. *Id.*

192. *Id.* See also McManus, *supra* note 161; Browning, *supra* note 160.

therefore publication was not only *a* last resort but the *only* last resort. These new options should be welcomed and utilized. "We must be acutely aware of excessive rigidity when applying the law in the Internet context; emerging technologies require a flexible approach."¹⁹³

Like most issues of service, the devil is often in the details, and service by social media would certainly be no exception. Determining precisely what should be required of a social networking site to be a venue for effecting service and discovering exactly how that service would be accomplished are crucial to utilizing social media as a reasonable alternative.

III. DIGITAL DETAILS

This Part outlines exactly which laws need to be changed to permit service through social media, what is required of the social networking website in order for service to be accomplished through it, how service through social media would be completed, and factors courts should use in evaluating the permissibility of social media service in each circumstance. Because service must be statutorily permissible, a change to state civil procedure rules is the first thing that should occur for domestic service through social media.

A. State Law Rule Change

A change in the FRCP is not an appropriate solution to permit service through social media for a number of reasons. First, Rule 4 permits service by following state law, and thus if state law permits service through social media, parties in federal court will have the option of service through social media as well.¹⁹⁴ Additionally, state service of process rules are generally more liberal than the FRCP.¹⁹⁵ States have promulgated rules permitting service by publication, long arm, and other broader methods.¹⁹⁶ States are also better at assessing the more intricate needs of citizens, especially when the inquiry requires an assessment of the level of progression of citizens and their use of new technology.¹⁹⁷ Moreover, research has shown

193. *Brookfield Commc'ns, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1054 (9th Cir. 1999).

194. FED. R. CIV. P. 4.

195. Rieders, *supra* note 35, at 1021.

196. *Id.*

197. TOM SPOONER, PEW RESEARCH CTR., INTERNET USE BY REGION IN THE U.S. (2003), *available at* <http://www.pewinternet.org/Reports/2003/Internet-Use-by-Region-in-the-US.aspx>. Generally, Internet use across the United States can

that different areas of the country have different Internet usage rates and differing types of Internet usage.¹⁹⁸ Therefore, each state should individually incorporate changes to its service of process statutes to include electronic service through social media sites. Not only would this allow each state to tailor a rule to its citizens, but it would permit electronic service in *both* state court and federal court because of FRCP 4(e)(1)—allowing service by following state law where the action is brought.

Texas has already proposed a state law change to allow substituted service of citation through social media.¹⁹⁹ Texas House Bill 1989 was introduced in the 2013 Regular Session of the Texas Legislature.²⁰⁰ The bill proposes an amendment to the Texas Civil Practice and Remedies Code that allows substituted service through social media.²⁰¹ This is precisely the change that is needed for service via social media to be permissible.

Utilizing new state laws permitting alternative service through social media, courts should permit electronic service after weighing the following factors.

B. “Tagging” the Necessary Factors for Permissible Social Media Service

Courts have continuously noted that effective service of process must be evaluated on a case-by-case basis.²⁰² This principle is especially true for service effectuated with new technology. Each court must evaluate the circumstances of each case because

[w]hat constitutes appropriate service will vary depending on the particular circumstances of the case. In each case the court must determine whether the alternative method is reasonably calculated, under the circumstances, to apprise

vary from state to state. *Id.* As of 2002 the highest regions were the New England states and the Pacific Northwest; the lowest were the South and the Lower Midwest. *Id.* Additionally, each area was shown to have a different emphasis in online activities, but overall e-mail activity was not shown to vary. *Id.*

198. *Id.*

199. H.B. 1989, 83d Reg. Sess. (Tex. 2013).

200. Legislation: History, TEX. LEGISLATURE ONLINE, <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=HB1989> (last visited Dec. 10, 2013).

201. H.B. 1989.

202. Philip Morris USA Inc. v. Veles Ltd., No. 06 CV 2988(GBD), 2007 WL 725412 (S.D.N.Y. Mar. 12, 2007).

interested parties of the pendency of the action and afford them an opportunity to present their objections.²⁰³

Thus, the following factors provide a framework under which service through social media, and other new technology, should be assessed. First, the social media site itself must provide a platform consistent with service of process. This means that the site should offer a non-connected user a means of contacting another user through a private message.²⁰⁴ The messaging feature of the site must also have the ability to include attachments in the message so that the summons and the complaint can be attached and sent in the message. Facebook is the only social media site that currently possesses both of these features.

Second, because a question will likely be raised about whether the account belongs to the defendant, the plaintiff must make reasonable efforts to verify the account through corroboration of the information contained in it. Therefore, the plaintiff would be required to show with a reasonable degree of certainty that a considerable amount of the information contained in the profile, such as education, occupation, hobbies, friends, interests, age, hometown, and possibly general location, matches information known about the defendant sought to be served. Social media sites support users providing accurate information; for example, Facebook has a policy that users provide real names and information and reserves the right to remove a user's account if it violates this policy.²⁰⁵

Third, in order to establish timeliness of notice via social media, there must be evidence of the defendant's use of the site, such as status updates, postings on others' walls, connecting with other users, or similar activity. This would be done by examining the frequency by which the user engages in these activities. If frequency of use cannot be shown *or* the user's account has been set to private, service would not be permissible. This type of analysis is very similar to the one courts have used in determining the length of time notice by publication in a newspaper should run.²⁰⁶

203. *Id.* at *2.

204. In Facebook terms, users are "non-connected" if they are not "friends." Arguably, the requirement that the notice be sent through a *private* message is not absolutely crucial. Because this feature exists, however, it should be utilized. Privately sending notice assures that the correct person will see it and that it will not get removed before he does so.

205. *Statement of Rights and Responsibilities*, FACEBOOK, <https://www.facebook.com/legal/terms> (last visited Nov. 8, 2013).

206. See *Pennoyer v. Neff*, 95 U.S. 714, 741–43 (1877).

These factors narrow the instances in which service of process could actually be used, allowing a palatable transition into allowing service of process through social media. They are also the same factors used by foreign courts²⁰⁷ as well as states considering service via social media. The proposed Texas bill mentioned above offers guidance on how these factors would be incorporated into actual legislation. The bill reads:

(a) If substituted service of citation is authorized under the Texas Rules of Civil Procedure, the court may prescribe as a method of service under those rules an electronic communication sent to the defendant through a social media website if the court finds that: (1) the defendant maintains a social media page on that website; (2) the profile on the social media page is the profile of the defendant; (3) the defendant regularly accesses the social media page account; and (4) the defendant could reasonably be expected to receive actual notice if the electronic communication were sent to the defendant's account. . . .²⁰⁸

After meeting the above requirements, effectuating service through social media would be quite simple, involving only a couple of quick steps.

C. Practicalities of "Signing On" to Social Media Service

Service through social media would be accomplished in a way similar to service through mail. To serve by social media, a plaintiff would simply have a person appointed by law send a private message to the defendant's social media account with the petition and summons attached. A significant addition to the features of Facebook private messages creates an even stronger argument for their use for service. As of October 2012, Facebook implemented

207. John G. Browning, *Served Without Ever Leaving the Computer: Service of Process via Social Media*, 73 TEX. B.J. 180, 181 (2010). Because defendants had friended one another on Facebook and because they had not utilized privacy settings, "attorneys were able to match up personally identifiable information on the defendants' Facebook profiles (birth dates, lists of friends, and email addresses) with [disclosed] information." With this information, the attorneys showed that delivery to these Facebook profiles would be sufficient to give notice to the defendants. *Id.*

208. H.B. 1989, 83d Reg. Sess. (Tex. 2013).

“read receipts,” which allow the sender of the message to see the *exact time* the recipient read the message.²⁰⁹



This development provides a substantial degree of certainty and reliability to social media service that, ironically, many of the traditional methods of service do not possess. Moreover, many users choose to have Facebook notifications sent via e-mail or mobile phone. As of November 2013, more than 800 million active monthly users utilize Facebook through a mobile phone.²¹⁰ Having notifications sent to multiple media provides an even greater assurance that the defendant served through social media will receive effective service.

Facebook's implementation of read receipts, coupled with the increasing ability to access its site, makes it even more likely that service though it would reach the intended party. In many ways, service through social media encompasses the very essence of what due process is all about—that a person be *in fact* notified of the litigation against him.

CONCLUSION

It is clear that over the past several decades the methods of communication in the United States have changed drastically, and those new methods have provided new means that can be used to effect service. Social networks are powerful venues for effecting service of process that is likely to give notice. Courts should take the opportunity to use this new technology and not be constrained by conventional methods.

209. See generally *Facebook Help Center: Messaging, Messages, Settings and Security, What Happens When I Message Someone?*, FACEBOOK, <https://www.facebook.com/help/580504375298594> (last visited Nov. 8, 2013) (“When you send someone a message, it gets delivered to the person’s Facebook Messages. If the person you messaged has turned chat on, your message will appear as a chat. If they have chat off, the message will appear in their message inbox and they will receive a notification. Once the person sees your message, it will be marked as seen.”). See also Salvador Rodriguez, *Facebook Message “Seen” Feature Could Create Awkward Situations*, L.A. TIMES (June 5, 2012), available at <http://articles.latimes.com/2012/jun/05/business/la-fi-tn-facebook-seen-feature-20120531>.

210. *Key Facts*, *supra* note 95.

The history of service of process and the development of communication in the United States show that the use of social networks for service of process is the logical next step. Today, courts must not ignore the importance of social media and its utility for service. No other communication method in history has infiltrated the everyday life of Americans citizens like social media. “It would be akin to hiding one’s head in the sand to ignore such realities and the positives of such advancements.”²¹¹

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211. *In re Int’l Telemedia Associates, Inc.*, 245 B.R. 713, 719 (Bankr. N.D. Ga. 2000).

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